

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

BROADCOM CORPORATION,

Plaintiff,

v.

QUALCOMM INCORPORATED,

Defendant.

Civil Action No. 05-3350 (MLC)

**MEMORANDUM IN SUPPORT OF QUALCOMM INCORPORATED'S
MOTION TO SEAL MATERIALS PURSUANT TO LOCAL RULE 5.3**

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Attorneys for Defendant
QUALCOMM Incorporated

Plaintiff QUALCOMM Incorporated ("QUALCOMM") respectfully submits this memorandum in support of its motion to seal materials pursuant to L.Civ.R. 5.3(c).

This is an antitrust case requiring discovery of highly sensitive competitive information. The parties have produced confidential information in discovery, the public disclosure of which could affect legitimate business interests. To protect the confidentiality of this information, the parties entered into an Order Governing the Production and Exchange of Confidential Material, which the Court entered on March 13, 2006 (the "Protective Order"). The Protective Order allows the parties to designate information as "Confidential" (Order ¶ 3) or "Highly Confidential" (id. ¶ 4), and provides that a party wishing to use material designated "Confidential" or "Highly Confidential" in a submission filed with the Court must move pursuant to Local Rule 5.3 for leave to file the submission under seal (id. ¶ 11).

In support of its Memorandum in Opposition to Texas Instruments Incorporated's Motion to Quash and in Support of Qualcomm Incorporated's Cross-Motion to Compel, dated August 21, 2006, QUALCOMM relies upon documents and discovery responses it has received from Broadcom or Texas Instruments under the terms on the Protective Order and that Broadcom has designated pursuant to the terms of the Protective Order. These documents are:

- a) A "Common Interest and Confidentiality Agreement" between and among Broadcom, TI, and an unknown, third company, executed between Broadcom and TI in April 2005, produced by Broadcom in this action and designated "Highly Confidential", bearing production numbers BCMCEN4174577-81 (Gonell Ex. 3);
- b) Excerpts of Broadcom Corporation's Objections and Responses to QUALCOMM Incorporated's First Set Of Interrogatories, designated by

Broadcom as “Highly Confidential” and dated February 16, 2006 (Gonell Ex. 7);

- c) A letter from S. Kaiser to F. Gonell comprising Broadcom’s supplemental response to QUALCOMM’s Interrogatory No. 11, designated by Broadcom as “Highly Confidential” (Gonell Ex. 15);
- d) A document produced by Broadcom entitled “PROJECT STOCKHOLM – 27 October – 10am”, reflecting the status of approvals for a joint press release by Broadcom, Texas Instruments, Nokia, Ericsson, NEC and Panasonic relating to those companies’ complaints to the European Commission about QUALCOMM, designated by Broadcom as “Confidential” and bearing production number BCMBLA0868475 (Gonell Ex. 16);
- e) An email produced by Broadcom from Gail Chandler of Texas Instruments to, among others, Peter Olofsson of Ericsson and Bill Blanning of Broadcom, confirming that “Project Stockholm” and “Project 17” are the same “project”, designated “Confidential” and bearing production numbers BCMBLA0467013-014 (Gonell Ex. 17); and
- f) A series of emails between Gail Chandler of TI and Don Clark of the Wall Street Journal discussing, among other things, a potential meeting between Stephen Neuwirth, counsel for TI, and Mr. Clark regarding TI’s complaint against QUALCOMM to the European Commission, produced by TI in this action and designated “Highly Confidential”, bearing production numbers TI-0020993 to TI-0020994 (Gonell Ex. 37).

In addition, QUALCOMM’s Memorandum in Opposition to Texas Instruments Incorporated’s Motion to Quash and in Support of QUALCOMM Incorporated’s Cross-Motion to Compel quotes material from some of these documents.

The Protective Order provides that a party may designate “Material” as “Confidential” if the party “in good faith believes that such Material is confidential to the Designating Party’s business”. (Prot. Ord. ¶ 3.) The Protective Order also provides that a party may designate “Material” as “Highly Confidential” if the party “in good faith believes that such Material contains highly confidential information that is so commercially sensitive or confidential that disclosure to persons other than those authorized poses a substantial risk of impairing the business interests of the Designating

Party or a nonparty”. (Id. ¶ 10.) The Protective Order further provides that “[a]s to any Material designated as ‘Confidential’ or ‘Highly Confidential’, the Designating Party shall hereby be deemed to have certified that it believes in good faith that good cause exists, within the meaning of Rule 26(c) of the Federal Rules of Civil Procedure, for the Court to grant a protective order covering such Material”. (Id. ¶ 29.) Accordingly, although the documents at issue are Broadcom’s or Texas Instruments’ documents and not QUALCOMM’s, QUALCOMM understands Broadcom or Texas Instruments to have certified that disclosure of the documents at issue would cause harm to Broadcom’s or Texas Instruments’ business interests. QUALCOMM accepts this certification as true for purposes of this motion, although it reserves the right to challenge the confidentiality designations on the relevant documents under the procedures prescribed in the protective order.

QUALCOMM does not at this time believe that there is a less restrictive alternative to the relief sought. QUALCOMM does not seek to file the entirety of its submissions under seal. Rather, QUALCOMM seeks to file only those documents that Broadcom or Texas Instruments has designated as “Confidential” or “Highly Confidential”, and its brief quoting such materials, under seal. QUALCOMM will work with Broadcom to file a public version of the brief that redacts the quoted confidential information.

For all these reasons, QUALCOMM respectfully requests that the Court grant its motion to file materials under seal pursuant to Local Rule 5.3.

Respectfully submitted,

August 22, 2006

McCARTER & ENGLISH LLP

by

s/ William J. O'Shaughnessy
William J. O'Shaughnessy

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BROADCOM CORPORATION

Plaintiff,

v.

QUALCOMM INCORPORATED,

Defendant.

Civil Action No. 05-3550 (MLC)

NOTICE OF MOTION

Return Date: September 18, 2006

TO: LIZA M. WALSH, ESQ.
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Attorneys for Plaintiff

PLEASE TAKE NOTICE that Defendant QUALCOMM Incorporated ("QUALCOMM") will move this Court at The Fisher Federal Building and United States Courthouse, 402 East State Street, Trenton, New Jersey, on September 18, 2006 at 9 a.m., before Judge Mary L. Cooper, for an order pursuant to Local Rule 5.3 to seal materials submitted in Opposition to Texas Instruments Incorporated's Motion to Quash and in Support of Qualcomm Incorporated's Cross-Motion to Compel.

PLEASE TAKE FURTHER NOTICE that in support of the motion, QUALCOMM relies on the accompanying Memorandum in Support of QUALCOMM Incorporated's Motion to Seal Materials Pursuant to Local Rule 5.3.

PLEASE TAKE FURTHER NOTICE that a proposed form of order granting QUALCOMM's motion is submitted with the motion.

Dated: August 22, 2006

McCARTER & ENGLISH, LLP

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Attorneys for Defendant Qualcomm Incorporated

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

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Defendant.

Civil Action No. 05-3350 (MLC)

ORDER TO SEAL MATERIALS

THIS MATTER having been opened to the Court by McCarter & English, LLP, attorneys for defendant QUALCOMM Incorporated, upon QUALCOMM's application for the entry of an Order, pursuant to Local Civil Rule 5.3(c), providing for filing under seal of materials related to QUALCOMM's Memorandum in Opposition to Texas Instruments Incorporated's Motion to Quash and in Support of Qualcomm Incorporated's Cross-Motion to Compel and the Court having considered the papers submitted in support of this Motion and the arguments of counsel, the Court hereby finds:

1. Through discovery in this case, the parties have produced confidential information, the public disclosure of which could affect legitimate business interests. To protect the confidentiality of this information, the parties entered into an Order Governing the Production and Exchange of Confidential Material, which this Court entered on March 13, 2006 (the "Protective Order").

2. The Protective Order allows the parties to designate information as "Confidential" (Order ¶ 3) or "Highly Confidential (*id.* ¶ 4), and provides that a party wishing to use material designated "Confidential" or "Highly Confidential" in a

submission filed with the Court must move pursuant to Local Rule 5.3 for leave to file the submission under seal (id. ¶ 11).

3. QUALCOMM has filed under seal, in accordance with the provisions of Local Rule 5.3, the following documents related to QUALCOMM's Memorandum in Opposition to Texas Instruments Incorporated's Motion to Quash and in Support of Qualcomm Incorporated's Cross-Motion to Compel:

- a) A "Common Interest and Confidentiality Agreement" between and among Broadcom, TI, and an unknown, third company, executed between Broadcom and TI in April 2005, produced by Broadcom in this action and designated "Highly Confidential", bearing production numbers BCMCEN4174577-81 (Gonell Ex. 3);
- b) Excerpts of Broadcom Corporation's Objections and Responses to QUALCOMM Incorporated's First Set Of Interrogatories, designated by Broadcom as "Highly Confidential" and dated February 16, 2006 (Gonell Ex. 7);
- c) A letter from S. Kaiser to F. Gonell comprising Broadcom's supplemental response to QUALCOMM's Interrogatory No. 11, designated by Broadcom as "Highly Confidential" (Gonell Ex. 15);
- d) A document produced by Broadcom entitled "PROJECT STOCKHOLM – 27 October – 10am", reflecting the status of approvals for a joint press release by Broadcom, Texas Instruments, Nokia, Ericsson, NEC and Panasonic relating to those companies' complaints to the European Commission about QUALCOMM, designated by Broadcom as "Confidential" and bearing production number BCMBLA0868475 (Gonell Ex. 16);
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- f) A series of emails between Gail Chandler of TI and Don Clark of the Wall Street Journal discussing, among other things, a potential meeting between Stephen Neuwirth, counsel for TI, and Mr. Clark regarding TI's complaint against QUALCOMM to the European Commission, produced by TI in this action and designated "Highly Confidential", bearing production numbers TI-0020993 to TI-0020994 (Gonell Ex. 37).

- g) The Memorandum in Opposition to Texas Instruments Incorporated's Motion to Quash and in Support of Qualcomm Incorporated's Cross-Motion To Compel.

Collectively, these documents are referred to herein as the "Confidential Materials."

4. The Confidential Materials contain information that has been designated "Confidential" or "Highly Confidential" by Broadcom and Texas Instruments Incorporated ("TI") in accordance with the Protective Order.

5. QUALCOMM has complied with the terms of the Protective Order by moving to file the Confidential Materials under seal pursuant to L.Civ.R. 5.3(c).

6. The information in the Confidential Materials satisfies the standards set forth in L.Civ.R. 5.3. There is no less restrictive alternative to the filing of these materials under seal.

THEREFORE, it is this _____ day of _____ 2006

ORDERED that the Motion to Seal Materials Pursuant to Local Rule 5.3 is hereby granted; and

IT IS FURTHER ORDERED that the Clerk is hereby directed to seal the Confidential Materials.

Honorable Mary L. Cooper
United States District Judge

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Attorneys for Defendant Qualcomm Incorporated

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BROADCOM CORPORATION,	:	
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Plaintiff,	:	
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v.	:	
	:	
QUALCOMM INCORPORATED,	:	
	:	
Defendant.	:	

CERTIFICATION OF SERVICE

RICHARD HERNANDEZ, of full age, certifies as follows:

1. I am an attorney at law of the State of New Jersey and am associated with the firm of McCarter & English, LLP, attorneys for defendant Qualcomm Incorporated.
2. On August 22, 2006, I forwarded true copies of:
 - (a) Notice of Motion;

(b) Memorandum In Support of Qualcomm Incorporated's Motion to Seal
Materials Pursuant to Local Rule 5.3;

(c) Proposed Order;

to the following:

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Via Electronic Filing and First Class Mail

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I hereby certify that the foregoing statements made by me are true. I am aware that if any
of the foregoing statements made by me are willfully false, I am subject to punishment.

s/ Richard Hernandez

DATED: August 26, 2006